UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	88 Civ. 4486 (LAP)
Plaintiff,	ORDER
- v. -	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,	IRB APPLICATION 170
Defendants.	

LORETTA A. PRESKA, Chief United States District Judge:

Before the Court is Application 170 of the Independent Review Board ("IRB") seeking affirmance of IRB's June 18, 2014 Opinion and Decision ("IRB Decision") permanently expelling Frank Radice ("Radice") from membership in the International Brotherhood of Teamsters ("IBT"). For the reasons that follow, Application 170 is GRANTED, and the IRB Decision is AFFIRMED in all respects.

BACKGROUND

On December 20, 2013, IBT General President James Hoffa filed IRB-recommended charges against Radice and referred them to the IRB for adjudication. On March 12, 2014, the IRB held a hearing that Radice chose not to attend. During the hearing, the Chief Investigator introduced Exhibits 1-27 into evidence. Following the hearing was a ten-day period during which Radice was entitled to supplement the record; during that period, Radice's counsel submitted letters dated October 10, 2013, and

January 8, 2014, arguing primarily that Radice's resignation from the IBT should have prevented his being charged.

On June 18, 2014, the IRB issued its Opinion and Decision. The IRB found by a preponderance of the evidence that Radice had committed two offenses: (1) he brought reproach upon the union by being a member of the Gambino Organized Crime Family, and (2) he failed to cooperate with the IRB as required under the consent order and IBT constitution. (IRB Decision at 3-11.)

On July 2, 2014, Radice's counsel submitted an objection to Application 170, (Frank Radice's Objection to App. 170 of the IRB [dkt. no. 4372] ("Radice Objection")), and on July 11, 2014, the Chief Investigator responded, (Ltr. from Charles M. Carberry, Chief Investigator, to Hon. Loretta A. Preska (July 11, 2014) [dkt. no. 4373] ("IRB Response").) On July 18, 2014, Radice's counsel asserted that the IRB Response did not fully address Radice's objection and asked the Court to hold a hearing on the issue. (See Ltr. from Jonathan Bardavid to Hon. Loretta A. Preska (July 18, 2014) [dkt. no. 4375] ("Radice Reply").)

DISCUSSION

When acting as an adjudicator, the IRB can impose sanctions where the disciplinary charge is supported by a preponderance of the evidence. Rules & Procedures for Operation of the IRB ¶ J.6; United States v. Int'l Bhd. of Teamsters, 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996) aff'd sub nom. United States v. Int'l

Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO, 120 F.3d 341 (2d Cir. 1997). In reviewing IRB adjudications, this Court will overturn the IRB's determination only if it is "arbitrary and capricious or otherwise contrary to law." United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO, 978 F.2d 68, 73 (2d Cir. 1992) ("The district judge derives his authority in this case from the terms of the consent decree, which incorporates the APA standards of review applicable to final agency action. . . . [T]he APA is clear: a reviewing court may set aside final agency action only if it is arbitrary and capricious or otherwise contrary to law. 5 U.S.C. § 706(2)(A)."). Pursuant to this deferential standard, "[t]he reviewing court should not overturn the independent administrator's choice of sanctions unless it finds the penalty 'unwarranted in law' or 'without justification in fact.'" Id. (quoting Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 185-86 (1973)).

Radice's sole objection to Application 170 centers on the use of the term "IBT affiliated entity." The term appears at the conclusion of the Decision but is not explicitly defined:

> Accordingly, Radice is permanently expelled from membership in Local 817, the IBT and IBT affiliated entities, and he is permanently barred from holding office or employment (including as an independent contractor or consultant) with Local 817,

> the IBT and all IBT affiliated entities. He may not receive any payments, salary, gratuities, gifts, severance payments, allowances, fees, benefits payments or contributions or any other compensation of any kind from Local 817 or other IBT affiliated entities, except that he may receive any pension, vacation or other benefits from existing plans or programs maintained by Local 817 or other IBT affiliated entities which had vested or accrued prior to his expulsion from membership.

(IRB Decision, at 12 (emphasis added).) Radice seeks modification of the IRB Decision on the basis that forbidding payments from "affiliated entities" is "unlawful" and represents an attempt to prevent "Mr. Radice's current or future employer from making otherwise lawful contributions on his behalf to any IBT fund and/or to prevent Mr. Radice from continuing to receive health insurance from an IBT fund." (Radice Objection, at 3-4.) Radice's concern is that he will be "prevented from obtaining future, currently non-vested benefits from any pension, health and welfare, severance, on any other IBT benefit fund." (Radice Objection, at 2 (footnote omitted).)

In its response to the objection, IRB takes the position that "IBT affiliated entity" includes "the international, State Conferences, Joint Councils, Locals, other IBT affiliated labor organizations, and IBT affiliated benefit funds" and clarifies that "[a]n employer with a contract with a Teamster entity is

not an IBT affiliated entity." (IRB Response.) IRB further explained:

> In the abstract, it is difficult to respond to [the objection insofar as it concerns obtaining "future non-vested benefits from any . . . IBT benefit fund"]. Under the IRB's decision . . . Radice can receive pension or other benefits that "had vested or accrued prior to his expulsion from membership." This does not apply to any benefit that may become vested under a fund's rules in the future based upon legitimate contributions to a Teamster affiliated benefit fund by an employer."

Id., at 2 (citations omitted).

Radice's objection relies on Section 8(b)(1) of the National Labor Relations Act ("NLRA"), which makes it an unfair labor practice for a "labor organization or its agents — to restrain or coerce employees in the exercise of the rights guaranteed in section 157 of this title," 29 U.S.C.A. § 158 (West). The section 157 rights referred to are the rights "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and . . . the right to refrain from any or all of such activities." 29 U.S.C.A. § 157 (West). Radice additionally objects on the basis of NLRA Section 8(b)(2), which makes it an unfair labor practice for a labor organization or its agents to "cause or attempt to cause an employer to

discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." 29 U.S.C.A. § 158 (West).

Radice argues, in essence, that conditioning receipt of benefits on union membership constitutes discrimination against non-union employees, a proposition that finds support in a number of National Labor Relations Board opinions and court decisions enforcing those decisions.[1] Nonetheless, Mr. Radice's argument must fail.

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[1] See, e.g., Local Union No. 167, Progressive Mine Workers of Am. v. N.L.R.B., 422 F.2d 538, 540 (7th Cir. 1970) (enforcing an N.L.R.B. decision where "[t]he Board found that the Union violated § 8(b)(1)(A) of the Act by depriving [former union members] of eligibility for pension and welfare benefits because of non-membership in the Union."); see also International Union of Operating Engineers Stationary Engineers, Local 39, 2003 WL 26072895 (N.L.R.B.)("Although the Union asserts that the benefits plans its employees participated in require Union membership, it has offered no evidence to substantiate this claim and it is not clear it could legitimately do so. If the plans in issue are the trust fund plans available to employees the Union represents, they would generally not require Union membership. For, a union acting as a Section 9(a) representative may not limit eligibility for its benefits plan to union members. . . . [I]f participation of the Union's employees in the benefits plan is a matter within the Union's control, and the Union provides the benefit as a condition of (cont'd)

Sections 8(a) and (b) of the NLRA regulate the behavior of labor organizations and employers, respectively, and the IRB is neither an employer nor labor organization in relation to Radice. The decisions supporting Radice's arguments are either NLRB decisions or District Courts decisions reviewing NLRB determinations. The posture here is different, and importantly, the purposes of the NLRA are not implicated when the IRB acts pursuant to its own well-established procedures not to regulate labor relations but rather to "rid the IBT of the hideous influence of organized crime and establish a culture of democracy within the union." United States v. Int'l Bhd. of Teamsters, 51 F. Supp. 2d 314, 315 (S.D.N.Y. 1999). Both this Court and the Court of Appeals have noted the significance of the IRB's unique role relative to labor disputes. See, e.g., United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO, 12 F.3d 360, 367 (2d Cir. 1993) ("As we stated in United States v. IBT, 954 F.2d 801,

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employment, it would discriminate by prohibiting nonmember employees from participation, while providing coverage to member-employees.") (footnotes omitted); Montauk Iron & Steel Corp. (Local 815, Teamsters), 127 N.L.R.B. 993, 1004 (1960) ("Accordingly, I find that Local 815 caused the Company to discriminate, and that the Company did discriminate, against Ferland in respect to welfare and pension benefits because of the termination of his membership in Local 815. Such conduct constituted a violation of Section 8(a)(1) and (3) of the Act by the Company and a violation of Section 8(b)(1)(A) and (2) of the Act by Local 815.")

810 (2d Cir.), cert. denied, 505 U.S. 1205, 112 S.Ct. 2993, 120 L.Ed.2d 870 (1992), 'collective bargaining agreements and the Consent Decree address different problems and serve different purposes. The former governs the daily relations between particular employers and their employees, while the latter is an attempt to rebuild the infrastructure of an entire national labor organization.' The district court specifically noted in this case that 'the IRB has no role in labor-management relations.' IBT, 803 F.Supp. at 817.")

In this case, the remedial function of the IRB provides just cause for the sanctions against Radice; the sanctions do not represent an attempt to discriminate on the basis of Union membership. This view is borne out by the observation that the sanctions against Mr. Radice are not unique: the IRB has issued similar sanctions in the past, and both this Court and the Court of Appeals have affirmed them. See, e.g., United States v. Int'l Bhd. of Teamsters, 247 F.3d 370, 390 (2d Cir. 2001) (affirming the District Court's decisions and holding that "IRB's decision regarding the choice of sanctions [wa]s neither arbitrary nor capricious" where the appellants were "permanently barred from membership, permanently barred from holding any office or employment relationship with the IBT or its affiliates or otherwise drawing any salary or compensation from any IBT-affiliated source."); United States v. Int'l Bhd. of Teamsters,

Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO, 814 F. Supp. 1165, 1184 (S.D.N.Y. 1993) (affirming an IRB decision where "the Independent Administrator permanently barred [respondent] from the IBT," "prohibited him from receiving compensation from any IBT-affiliated entity," "prohibited IBT-affiliated entities from paying respondent his severance," and "precluded IBT-affiliated entities from making contributions on respondent's behalf to employment benefit plans, although the Independent Administrator did not alienate his vested benefits.").

Finally, the objections raised are purely speculative. As a result, any potential unfair labor practices appear to be unripe for adjudication. Radice has not asserted that any unfair labor practice has occurred; rather, he fears that one may occur as a result of one possible reading of the IRB Decision. In other words, it is unclear whether the IRB Decision requires an employer or labor organization to commit unfair labor practices, and so this Court need not take up the issue. Radice is of course entitled to bring claims pursuant to the appropriate procedures if and when they do arise.

This Court, having reviewed all the materials in the record, cannot find arbitrary or capricious the IRB's determinations that Radice brought reproach upon the union by being a member of an organized crime family and failed to cooperate with the IRB. Accordingly, the sanctions imposed

against Radice are neither unwarranted in law nor without justification in fact.

CONCLUSION

For all of the reasons above, Radice's objection must fail. It is hereby ORDERED that the IRB Opinion and Decision of June 18, 2014, is AFFIRMED in all respects. Application 170 is therefore GRANTED.

SO ORDERED.

Dated: New York, New York
March 4, 2015

LORETTA A. PRESKA
Chief United States District Judge